

FCC MAIL SECTION

Federal Communications Commission

DA 99-2588

Nov 23 2 58 PM '99

Before the

Federal Communications Commission

DISPATCHED Washington, D.C. 20554

In the Matter of)

Request for Review)

of the Decision of)

the Universal Service Administrator by)

Bresnan Communications Company)

White Plains, New York)

Federal-State Joint Board on Universal Service)

Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-13014

CC Docket No. 96-45

CC Docket No. 97-21✓

ORDER

Adopted: November 19, 1999

Released: November 19, 1999

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Letter of Appeal, filed June 24, 1999, by Bresnan Communications Company (Bresnan) seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator) regarding two funding requests submitted by the Marquette-Alger Intermediate School District, Marquette, Michigan (MAISD). Bresnan seeks review of the SLD's denial of funding for telecommunications services under the schools and libraries universal service support mechanism.¹ For the reasons set forth below, we deny the Letter of Appeal and affirm the SLD's denial of MAISD's application for discounts for telecommunications services.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.²

¹ Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

² 47 C.F.R. §§ 54.402, 54.503.

3. By letter dated February 24, 1999, the SLD denied MAISD's funding requests (Funding Request Numbers (FRNs) 60685 and 60693) for discounts on telecommunications services provided by Bresnan because the proposed service provider "is not a common carrier provider of telecommunications services, and therefore, is not eligible to receive reimbursement for telecommunications services." MAISD appealed the SLD's decision by letter dated March 17, 1999. On May 25, 1999, the SLD affirmed its initial funding decision and denied MAISD's appeal.³ Specifically, the Administrator's Decision on Appeal explained that the services at issue are provided by an ineligible service provider for MAISD, which is located in Marquette, Michigan, because "[t]he service provider, Bresnan Communications, was not an eligible telecommunications provider outside the state of New York in 1998. They are an eligible telecommunications provider as of March 1999 in New York State only."⁴

4. In its June 24, 1999 Letter of Appeal to the Commission, Bresnan contends that it is a telecommunications service provider eligible to receive support for provision of telecommunications services to MAISD, and that the basis for the confusion over its status stemmed from its failure to classify itself correctly in its Service Provider Information Form (Form 498).⁵ Specifically, Bresnan contends that, when it filed its Form 498 in April of 1998, it incorrectly listed "Toll Reseller" as the appropriate descriptive category. According to Bresnan, while it was also "offering and providing high-speed broadband multi-point networks, point-to-point data, voice and video circuits and virtual private networks, these services did not clearly conform to any of the service provider category descriptions provided in the Form 498 instructions." Bresnan concedes that it should have indicated "Other Local" as its service provider category on its initially filed Form 498 and that it filed an amended Form 498 indicating "Other Local" as its service provider category in 1999. Because it was then providing these same services, Bresnan claims that it was an eligible telecommunications provider in 1998.

5. We have reviewed MAISD's application as well as SLD's records relating to this application, and we conclude that SLD properly denied MAISD's application for the discounts at issue here. As described above, and as acknowledged by Bresnan, whatever its status in 1998, Bresnan incorrectly described itself as a "Toll Reseller." Given this, SLD determined that Bresnan was not a telecommunications service provider eligible to receive support for provision of telecommunications services at the time relevant to MAISD's application. Review of SLD's records further reveals that SLD received no documentation from Bresnan during the application processing period attempting to amend its Form 498. In the absence of appropriate identification

³ Administrator's Decision on Appeal, dated May 25, 1999.

⁴ Administrator's Decision at 2.

⁵ June 24, 1999 Appeal Letter at 2-3.

on the Form 498, at the appropriate time (during the application review process), MAISD's application contravened the Communications Act's requirement that only "telecommunications carriers" receive direct reimbursement under the universal service program for the provision of discounted telecommunications services. Given the clear proscription of the *Universal Service Order* on funding for telecommunications services provided by entities other than common carriers, it was MAISD's responsibility to ensure that the service provider it had contracted with was indeed a telecommunications provider whose status as a telecommunications provider would be appropriately reflected in the Form 498. In light of these findings, we conclude that SLD correctly denied funding for MAISD's request for telecommunications discounts.

6. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the appeal filed by Bresnan Communications on June 24, 1999 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Yog R. Varma", with a long horizontal stroke extending to the right.

Yog R. Varma
Deputy Chief, Common Carrier Bureau